

REMARKS

This responds to the **December 14, 2007** Office Action.

In the Office Action, claims 1-8 and 10-28 are noted as pending in the application, claims 1-8 and 10-23 stand rejected, no claims are objected to and no claims are allowed. Claims 24-28 have been withdrawn from consideration as being directed to non-elected claims.

Applicant appreciates the withdrawal of the previous rejections. As previously noted, Applicant believes that the claims are patentable over the references applied in the previous rejections.

Applicant also appreciates the citation of additional references, which appear to support the patentability of the present claims. Applicant respectfully traverses the present rejections for the following reasons. First, the Office Action fails to indicate why the cited references would be combined. Second, the Office Action fails to establish obviousness. Third, the references establish that it would not have been obvious to combine references indicated in the Office Action, and even if combined the Office Action fails to establish that the claims would be obvious. Therefore, the present claims are patentable. The reasons are discussed more fully below.

Objections

Claims 16 and 18 are objected to for failing to further limit the subject matter of the claims from which they depend. These claims have been amended to place them in proper form.

Rejections

Claims 1-3, 6-8, 10, 12 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Jonas et al* (5,234,126) (*Jonas*) in view of *Echternach* (GB 2,119,743 A, November 23, 1983). Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over *Jonas* as modified by *Echternach* in view of *Sugiyama et al*, of record. Claims 14-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over

Harvey (3,272,383) in view of *Echternach* and *Sugiyama et al.* Claims 19 and 20 rejected under 35 U.S.C. 103(a) as being unpatentable over *Biggins*, of record, in view of *Jonas*, *Echternach* and *Sugiyama et al.* Claims 21-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Harvey* in view of *Lyu et al.*

The foregoing rejections are respectfully traversed because, among other reasons, there is no showing of the cited combinations leading to predictable results, and because the references themselves teach that the combinations would not lead to predictable results.

Applicant's Disclosure

Applicant's disclosure has been discussed previously and that discussion will not be repeated here.

Cited Prior Art

Jonas, U.S. Patent No. 5,234,126, teaches a plastic container with a domed bottom in FIG. 5. *Jonas* also teaches that container design requires very critical features. Without those critical features, there is no predictability that any particular design, whether on its own or having features from other containers will work. Some specific teachings of *Jonas* will be described first, followed by a discussion of the teachings of the other applied references. Then, Applicant will apply those teachings to establish that it would not have been obvious to combine the references as has been done in the Office Action.

According to *Jonas*, "it is critical . . . the bottoms of these containers can be configured so that they are capable of deflecting both inward and outward in order to provide adequate volumetric contraction and expansion. . . . The preferred practice is to keep as much of the bottom wall as flat as possible so the pressures required to deflect the bottom wall do not exceed the curved side wall panel strength. As more curved or irregular shaped surfaces are added to the bottom wall, the bottom wall becomes more rigid and the likelihood of exceeding side wall panel strength increases". *Jonas* further states that several critical criteria must be met in a usable container, and *Jonas* has

found those requirements. The first critical criteria is that the bottom wall must deflect outward to almost a hemispheric shape and return without causing paneled side walls. [See, *Jonas*, column 5, lines 19-24.] The second critical criteria is that the bottom must deflect inward to avoid side wall paneling. [See, *Jonas*, column 5, lines 24-28.] *Jonas* further states that there are "fairly critical numerical values associated with certain parameters of the container which enable the generation of container bottoms which will survive terminal sterilization." [See, *Jonas*, column 7, lines 60-64.] On the other hand, not using those fairly critical numerical values means that the literally millions of theoretical container bottom configurations must be tested by trial and error. [Compare, *Jonas*, column 7, lines 44-48, with column 7, lines 60, through column 8, line 1.]

Also according to *Jonas*, to make the *Jonas* design, over 100 finite element analyses were run. [See, *Jonas*, column 6, lines 17-18.] Finite element analysis is a very difficult process, and it is submitted that relatively few people skilled in this art at the time of the present inventions have the capability of running such analyses. Without such capabilities, design of low panel strength containers depended on the success of trial and error technique. [See, *Jonas*, column 7, lines 44-48.]

Another of the required *Jonas* criteria is that the bottom profile must avoid a sharp radius. Examples of acceptable radius surfaces are apparently shown in FIG. 5 of *Jonas*, where the circles S1 and S2 show how gradual a radius must be for the *Jonas* bottom configuration. The circles are shown having a specified radius and are shown contacting the adjacent surface over a designated arc length, several examples of which are 72 degrees and 78 degrees. What this apparently means is that to be a predictable, successful design, a container that will be known to work properly must have not only a gradual radius in the bottom profile but have the radii specifically identified in the *Jonas* equations. For those equations, see the equations at column 9, lines 60-65 and the accompanying text, as well as the discussion of the use of those equations at column 12, line 12 through column 13, line 11. Clearly there is no predictability in a container profile working unless it meets the *Jonas* criteria or there is substantial trial and error.

Echternach, GB2,119,743 teaches a buckle-resistant can having a bottom portion with two annular panel portions 52 and 55, and a central panel portion 58. The concentric panel portions 52, 55 and 58 are placed in a state of tension. Additionally, ogees 53 and 56 are included having relatively sharp radii compared to those in *Jonas*. Therefore, because the teachings of *Echternach* and *Jonas* contradict, it would not be obvious to combine the teachings of these two references. Additionally, *Echternach* is directed to metal can configurations while *Jonas* is directed to plastic containers, and there is no showing that one skilled in the art would apply the teachings of one reference to the teachings of the other.

Harvey, U.S. patent No. 3,272,383, teaches a one-piece extruded container, but there is no teaching or suggestion that the bottom configuration would be suitable for a container that is lower than it is wide. Additionally, the teachings of *Echternach* (GB2,119,743) are that pre-existing bottom configurations are not suitable, and *Harvey* appears to be one such pre-existing bottom configuration. Furthermore, *Echternach* specifically teaches that the concentric panels 52, 55 and 58 are all below the crest 47 of the countersink, while the *Harvey* concavo-convex end "C" is almost if not completely above any of the *Harvey* bottom formations. Therefore, any combination of these two references fails, and there is no showing that the combination described in the Office Action would be predictable.

Harvey also states that the bottom configuration must include the formation of the "chine A" for a practical and utilitarian article, without which the article would be practically useless for the purpose intended. [See, *Harvey*, column 4, lines 66-71.] Therefore, it is not seen how one skilled in the art, considering the prior art in its entirety, including evidence contrary to the position taken in the Office Action, would look to *Harvey* to reach the container as claimed. *Harvey* states that its container must have the chine A for proper construction, and there is no teaching or suggestion or any other consideration in *Harvey* or other applied reference that would lead one skilled in the art to combine *Harvey* with any of the other applied references.

Biggins has been discussed previously. The Office Action has failed to establish that *Biggins*, *Jonas*, *Echternach* and *Sugyama* would be combined, or that such

combination would produce the claimed inventions. In fact, the foregoing establishes that there is no teaching the references would be combined.

Lyu, U.S. patent No. 3,942,673, teaches a metal wall construction for containers having a bottom wall 14 with a spherical portion 24 having a radius of curvature of $R1$ which meets an annular portion 26 having a second radius of curvature $R2$. *Lyu's* side walls are taller than the container is wide.

Lyu also states that $H1$ and $H2$ are of utmost importance. $H1$ is the height of a vertical portion 20 and $H2$ is the height of the dome 22. [See, *Lyu*, column 3, lines 12-15.] As noted in the quoted text below, $H1$ is a required element for resistance to buckling, which is the purpose of the *Lyu* design, but a straight wall meeting the dome 22 is completely contrary to the teachings of *Jonas* requiring smooth transitions in the bottom profile. Specifically, *Lyu* states:

It has been found that the relation of $H1$ to $H2$ and the particular configuration of ellipsoidal dome 22 are the most important variables in the profiled bottom wall of container 10 to produce a container which is highly resistant to pressure buckling. Stated another way, the ellipsoidal dome 22 and substantially vertical wall 20 are dimensioned so that the maximum stress point on the ellipsoidal dome is located at the intersection between substantially vertical portion 20 and dome 22. In addition, the arcuate portion 16 at the lower end of side wall 12 and the annular bead 18 produce a reduced diameter for bottom wall 14. The diameter for the bottom wall 14 is defined by the lowermost edge of bead 18 and this annular edge produces the anchor point or base for bottom wall 14 when pressure is applied inside the container.

[See, *Lyu*, column 3, lines 16-31.] The teachings of *Lyu* and of *Jonas* are therefore contradictory and the Office Action fails to establish which reference is the correct teaching. No showing is made that combining *Lyu* and *Jonas* leads to a predictable result.

Likewise with the container of *Harvey*, there is nothing about these references that would make a container shorter than it is wide having the bottom configuration as claimed.

REASON TO COMBINE

The Office Action fails to articulate why the applied references would be combined. As part of a complete foundation for proving obviousness, the Office Action must articulate the basis for combining references, for example a teaching or suggestion that one skilled in the art, considering the references as a whole, would combine one or more aspects of one reference with one or more aspects of another reference.

An Office Action must establish why references would be combined. According to the US Supreme Court, "[I]t can be important to identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the elements in the way the claimed new invention does." [Teleflex Inc. v. KSR Int'l Co., 82 USPQ2d 1385, at 1396 (2007).] If any of these findings cannot be made, then this rationale cannot be used to support a conclusion that the claim would have been obvious to one of ordinary skill in the art. Note that combining known prior art elements is not sufficient to render the claimed invention obvious if the results would not have been predictable to one of ordinary skill in the art. [United States v. Adams, 383 U.S. 39, 51-52, 148 USPQ 479, 483 (1966).]

No such showing has been made in the present case. This is significant in the present case as demonstrated below, because there is no teaching or suggestion that the applied references would be combined. Simply by way of example, the *Jonas* reference makes crystal clear that some existing container structures are subject to catastrophic failure during normal manufacture and use, and that significant amounts of experimentation are required before it can be known that a particular container configuration will work as intended. Therefore, it is important that the Office Action demonstrates why the applied references can be combined, and not having done so, the Office Action fails to establish obviousness. *Jonas* proves that no container configuration can be predicted to work unless tested through trial and error or unless the container meets the very specific requirements set out in *Jonas*. Therefore, the Office

Action fails to show predictability by combining the references as it has, and thus fails to prove obviousness.

PROVING OBVIOUSNESS

The Office Action fails to prove obviousness. Under the accepted ways for proving obviousness under the US Supreme Court case of KSR, the Office Action must establish a teaching or suggestion or predictable results (among other things). [See, MPEP section 2143.] In the present case, no such showing has been made. Throughout the Office Action, the rationale for the claims allegedly being obvious is that "it is known in the art to utilize containers with these dimensions." [See, December 14, 2007 Office Action, paragraph 6.] No showing is made that the applied references would be combined, or that they would be combined to produce the apparatus recited in the claims. To the contrary, the applied references taken as a whole do not teach or suggest the claimed combinations, or that the combinations as recited by the Office Action would not be predicted or expected. Therefore, the Office Action has not established obviousness in this case.

THE REFERENCES ESTABLISH NON-OBVIOUSNESS

The law is clear that the references must be taken in their entireties for what they teach to one skilled in the art, and it is clear that it is improper to apply one aspect of a reference while ignoring other parts.

In the present case, *Jonas* is the primary reference for a number of rejections. However, as noted above, *Jonas* makes perfectly clear that its teachings are limited to a particular container configuration. It is also clear from *Jonas* that unless a container meets the restrictions of the equations disclosed in *Jonas*, the probability of producing a viable container configuration is less than five percent, hardly a predictable outcome. Put another way, unless a container meets the strict *Jonas* requirements, **the probability that the container will fail is greater than 95%**. *Jonas*, when considering the reference as a whole, establishes in a number of places why the claimed structures in the present application are not obvious.

Jonas applies to plastic containers. According to *Jonas*:

"it is critical . . . the bottoms of these containers can be configured so that they are capable of deflecting both inward and outward in order to provide adequate volumetric contraction and expansion. . . . The preferred practice is to keep as much of the bottom wall as flat as possible so the pressures required to deflect the bottom wall do not exceed the curved side wall panel strength. As more curved or irregular shaped surfaces are added to the bottom wall, the bottom wall becomes more rigid and the likelihood of exceeding side wall panel strength increases. For this reason the three bottom wall radius design proffered in U.S. patent No. 4,880,129 is undesirable. . . ."

[See, *Jonas*, column 4, line 50, through column 5, line 5.] The '129 patent is cited herein. That patent shows a bottom configuration very similar to that in *Echternach*, GB2,119,743. Therefore, *Jonas* establishes that combining with a container of the type of *Echternach* produces no predictable results other than likely failure, if not entirely teaching away from *Echternach*. Additionally, *Jonas* teaches that the bottom surface configuration is related to the integrity of the side wall panels, and there is no teaching or suggestion that the *Jonas* configuration would work with a side wall height less than the container diameter. As shown in another of the *Jonas*' applicants' application using the same information as *Jonas*, the containers are higher than they are wide. [See, *Gygax*, WO92/20587, cited herewith.] Therefore, *Jonas* and the applied references do not render the claims obvious.

Jonas also shows that the claims are not obvious for other reasons. According to *Jonas*, to make the *Jonas* design, over 100 finite element analyses were run. [See, *Jonas*, column 6, lines 17-18.] Finite element analysis is a very difficult process, and it is submitted that relatively few people of the level of skill in the art for this application at the time of filing have the capability of running such analyses. Without such capabilities, design of low panel strength containers depended on the success of trial and error technique. [See, *Jonas*, column 7, lines 44-48.] Therefore, design of such containers as are presented in the applied references has consistently been trial and error without one or another design success being predictable. Therefore, *Jonas*

establishes that the claimed container design would not be predictable without undue experimentation. In fact, *Jonas* expressly states that a container having a domed bottom "fails to perform acceptably". [See, *Jonas*, column 7, lines 29-32.] Therefore, *Jonas* specifically teaches away from the claims reciting a domed bottom.

Jonas also unequivocally establishes that any attempt at a combination of *Jonas* with another reference not meeting the *Jonas* criteria would not be obvious. Specifically, *Jonas* expressly states that more than one million possible designs were evaluated, and only approximately two and 1/2 percent of the bottom wall profiles performed acceptably. [See, *Jonas*, column 6, lines 21-25.] Therefore, there is no predictability that a *Jonas* configuration or any individual elements of *Jonas* would be combined with any other applied reference or element resulting in the claimed combination. Only through undue experimentation or rigorous finite element analysis would a particular design configuration be evaluated. Otherwise, one must use trial and error, as *Jonas* expressly states. [See, *Jonas*, column 7, lines 44-48.]

At least one of the required *Jonas* criteria is that the bottom profile must avoid a sharp radius. Examples of acceptable radius surfaces are apparently shown in FIG. 5 of *Jonas*, where the circles S1 and S2 show how gradual a radius must be for the *Jonas* bottom configuration. The circles are shown having a specified radius and that contact the adjacent surface over a designated arc length, several examples of which are 72 degrees and 78 degrees. [See, *Jonas*, column 9, lines 55-59.] On the other hand, the references applied in the Office Action do not appear to meet the *Jonas* requirement. For example, the teachings of *Jonas* contradict the teachings of *Echternach*, which has a bottom profile with sharp radii. Additionally, the bottom radius of the *Biggins* container appears to have sharp radii prohibited by *Jonas*, leading to the conclusion that no reason exists to combine the two references. Similarly, the *Lyu* reference appears to have a sharp radius R3 (FIG. 2), and even though *Lyu* is not applied with *Jonas*, the Office Action must take into account all the teachings of all the prior art taken as a whole. Therefore, all the prior art taken as a whole teaches in fact that it would not be obvious to combine these references.

On the other hand, if it is asserted that a sharp radius can be included in a workable design, the Office Action makes no showing as to how *Jonas* can be made consistent with such a workable design. In other words, there is no predictability that combining features of any of the applied references produces a workable container. Conversely, the Office Action cannot ignore the *Jonas* requirement that sharp radii must be avoided. The Office Action fails to establish obviousness.

Jonas also establishes that there are "fairly critical numerical values associated with certain parameters of the container which enable the generation of container bottoms which will survive terminal sterilization." [See, *Jonas*, column 7, lines 60-64.] On the other hand, not using those fairly critical numerical values means that the literally millions of theoretical container bottom configurations must be tested by trial and error. [Compare, *Jonas*, column 7, lines 44-48, with column 7, lines 60, through column 8, line 1.] In spite of the overwhelming evidence in the applied references, taken as a whole, that they would not be combined, the Office Action fails to establish that any of the applied references would be combined, for example with a predictable result, and the Office Action fails to establish that any of the applied references conform to the mathematical requirements set out in *Jonas*.

Claims

Consider now the claims in the application.

Claim 1 is an independent apparatus claim and recites in part:

"a raised portion having a convex shape and connected to the interior area of the recessed portion extending upward and toward the center of the receptacle a first distance wherein the raised portion is substantially circular and has an outer diameter between approximately two inches and approximately six inches; and

"an outer wall portion connected to the exterior area and extending at least partly upwardly a second distance greater than the first distance to a rim forming

an opening that has a maximum opening dimension greater than the second distance.”

None of the cited references taken singly or in combination teach or suggest the claimed combination, the recited elements quoted above, or wherein the raised portion has an outer diameter between approximately two inches and approximately six inches and an outer wall portion extending at least partly upwardly a second distance greater than the first distance to a rim forming an opening that has a maximum opening dimension greater than the second distance. As established in the discussion above, *Jonas* and *Echternach* would not be combined because *Jonas* requires smooth transitions in the bottom configuration whereas *Echternach* has relatively sharp radii. Additionally, no showing is made that elements of the metal *Echternach* container would be combined with *Jonas*, or that the *Jonas* container could have the features argued in the Office Action. In fact, all of the evidence taken as a whole is to the contrary. For example, *Jonas* says to keep the bottom as flat as possible, and that statement makes any combination with *Echternach*, which clearly also has a flat bottom with panels 52, 55 and 58, would produce a container having a flat bottom, not a domed container.

Even if *Jonas* uses a dome, the surface transitions must avoid sharp radii. In fact, the *Jonas* circles S1 and S2 have a specific radius, and one skilled in the art after reading *Jonas* would not look to *Echternach* with its sharp transitions for combining features. Moreover, nothing in the Office Action establishes that these two references would be combined. Furthermore, *Jonas* proves there is no predictability in combining with *Echternach* because such would require over 100 finite element analyses, or extensive trial and error. Therefore, one skilled in the art, and taking the art as a whole, including where the art leads away from the claimed inventions, would not use *Jonas* and *Echternach* to produce a container having the claimed features. While *Jonas* states that the unique configuration with the plastic container bottom makes the criticality of the wall dimensions and material properties “essentially irrelevant”, such a statement does not apply outside the “unique configuration” of the *Jonas* container. Clearly claim 1 is patentable over the applied references and the other references of record.

The claims 2-8, 10, 11 and 13 are dependent directly or indirectly from independent claim 1 and are asserted as being patentable for the same reasons as discussed with respect to claim 1, for the combinations in the dependent claims as well as for the additional limitations recited in the dependent claims. Note for example claim 4 which recites in part "wherein the raised portion extends upward to a top-most portion of the raised portion at a center of the receptacle and wherein the first distance from the recessed portion to the top-most portion is greater than approximately 1/2 inch". Note also claim 5, dependent from claim 4, reciting in part "wherein the first distance is approximately three quarter inch". Note also claim 11 reciting in part "wherein the second distance is approximately twice the first distance". None of the references teach or suggest the second distance approximately twice the first distance in combination with the elements of claim 1.

Claim 12 is an independent apparatus claims and recites

"a raised portion having a convex shape and connected to the interior area of the recessed portion extending upward and toward the center of the receptacle a first distance;

"an outer wall portion connected to the exterior area and extending at least partly upwardly a second distance greater than the first distance to a rim forming an opening that has a maximum opening dimension greater than the second distance; and

"wherein the second distance is approximately two inches."

Nothing in *Jonas* teaches or suggests an approximately two inch high outer wall container with an opening wider than the container is tall, and while *Echternach* mentions a 1.75 inch sidewall, any combination of *Jonas* and *Echternach* would have a flat and not a domed bottom.

Claim 14 is an independent apparatus claim and recites in part:

“a closed body portion having an upper rim defining an opening into the receptacle, an outer wall portion extending downwardly a first distance from the upper rim to a base portion, wherein the first distance is between one-quarter and 2 inches, the base portion having a substantially flat surface facing upwardly toward the opening and extending inwardly toward a center from the outer wall portion to a raised portion, wherein the base portion is configured to support a granular material and sized sufficiently to receive an open rim of a beverage container, wherein the raised portion extends inwardly from the base portion substantially constantly upwardly toward a center of the receptacle and wherein the raised portion has a vertical height approximately half the first distance, and wherein the raised portion is configured to allow a granular material to move under the force of gravity toward the base portion.”

None of the cited references taken singly or in combination teach or suggest the claimed combination, the recited elements quoted above, or an outer wall portion extending downwardly a first distance from the upper rim to a base portion, wherein the first distance is between one-quarter and 2 inches, the base portion extending inwardly toward a center from the outer wall portion to a raised portion, wherein the base portion is configured to support a granular material and sized sufficiently to receive an open rim of a beverage container, and wherein the raised portion has a vertical height approximately half the first distance. None of the references taken singly or in combination teach or suggest a body portion suitable for supporting granular material and for allowing the granular material to move toward the base portion where the raised portion has a vertical height approximately half the first distance of the outer wall portion. One skilled in the art of rimming dishes would not look to *Harvey*, *Echternach* or *Sugiyama* to arrive at the claimed invention, and those references do not teach or suggest a body portion having an outer wall between one-quarter and 2 inches high and having a raised portion with a vertical height approximately half the first distance of an outer wall portion. No showing has been made of why the references would be combined, but even if they were combined the teachings of all the references would

produce a container with flat bottom portions rather than a dome. Specifically, *Echternach* establishes the importance of flat bottom panels, and *Jonas* also states that bottom configurations should be as flat as possible. Therefore, taking the teachings of all the references as a whole any resulting container having the recited side wall would have flat bottom panels. The Office Action has not shown that any other configuration would be predictable.

Claims 15-18 are dependent directly or indirectly from independent claim 14 and are asserted as being patentable for the same reasons as discussed with respect to claim 14, for the combinations in the dependent claims as well as for the additional limitations recited in the dependent claims.

Claim 19 is an independent apparatus claim and recites in part:

“a round container having an upper rim defining an opening into the container, an outer wall portion extending vertically downwardly a first distance from the upper rim to a base portion, wherein the first distance is between one-quarter inch and 2 inches, the base portion having a substantially flat surface facing upwardly toward the opening and extending inwardly toward a center from the outer wall portion to a raised portion, wherein the raised portion extends inwardly from the base portion substantially constantly upwardly toward a center of the receptacle and wherein the raised portion has a vertical height approximately half the first distance; and

“a round rimming dish sized to fit at least partly within the round container, the dish having a recessed area for receiving a coating material for coating a rim of a drink ware, and also having a raised area in the dish sized sufficiently to allow manual grasping of the raised area.”

None of the cited references taken singly or in combination teach or suggest the claimed combination, the recited elements quoted above, or an outer wall portion extending vertically downwardly a first distance from the upper rim to a base portion, wherein the first distance is between one-quarter inch and 2 inches, wherein the raised

portion extends inwardly from the base portion substantially constantly upwardly toward a center of the receptacle and wherein the raised portion has a vertical height approximately half the first distance with a round rimming dish sized to fit at least partly within the round container. None of the references taken singly or in combination teach wherein the first distance is between one-quarter inch and two inches and wherein the raised portion has a vertical height approximately half the first distance. Therefore, for example, if the first distance is one-quarter inch, none of the references teach a raised portion of 1/8 of inch. Additionally, if the first distance is two inches, none of the references teach a raised portion of one inch. Moreover, none of the references teach or suggest, taken singly or in combination, the claimed round container with a round rimming dish as recited. *Biggins* has a flat bottom, *Jonas* states that bottom configurations should be as flat as possible, and *Echternach* and *Sugiyama* also teach flat bottom panels. Therefore, the combination and teachings of these references are that any resulting container would also have a flat bottom. Additionally, no showing is made in the Office Action that the teachings for plastic containers of *Biggins* and *Jonas* would be combined with the teachings for the metal containers of *Echternach* and *Sugiyama*. Clearly claim 19 is patentable over the references, and the Office Action has not established obviousness.

Claim 20 is dependent directly or indirectly from independent claim 19 and is asserted as being patentable for the same reasons as discussed with respect to claim 19, for the combinations in the dependent claims as well as for the additional limitations recited in the dependent claim.

Claim 21 is an independent apparatus claim and recites in part:

“a receptacle wall extending upwardly from a bottom portion of the receptacle wall to a rim, wherein the rim defines an opening having a size sufficient to receive the open rim of an item of drink ware and wherein the rim has an upper surface;

“a bottom wall joining the receptacle wall at the bottom portion of the receptacle wall, the bottom wall having a relatively flat section adjacent the

receptacle wall and a raised portion interior to the relatively flat section and wherein the raised portion extends upward to an upper position above the relatively flat section and below the rim wherein the upper position is greater than or equal to about one-half inch and less than two inches and wherein the opening size is greater than a distance from the bottom portion to the rim of the receptacle wall."

None of the cited references taken singly or in combination teach or suggest the claimed combination, the recited elements quoted above, or a receptacle wall extending upwardly from a bottom portion of the receptacle wall to a rim, wherein the rim defines an opening having a size sufficient to receive the open rim of an item of drink ware, the bottom wall having a relatively flat section adjacent the receptacle wall and a raised portion interior to the relatively flat section and wherein the raised portion extends upward to an upper position above the relatively flat section and below the rim wherein the upper position is greater than or equal to about one-half inch and less than two inches and wherein the opening size is greater than a distance from the bottom portion to the rim of the receptacle wall. None of the prior art teaches or suggests when taken singly or in combination a raised portion having an upper position greater than or equal to about 1/2 inch and less than two inches and wherein the opening size is greater than the height of the upper position. None of the prior art is concerned with migrating spice or other granular material outward to a recessed area while also allowing access without interference for drink ware into the container for rimming the drink ware. Additionally, *Harvey* and *Lyu* fail to teach or suggest an opening size greater than a height of the receptacle wall as recited. Therefore, the prior art does not teach or suggest to one skilled in the art the claimed invention.

The claims 22-23 are dependent directly or indirectly from independent claim 21 and are asserted as being patentable for the same reasons as discussed with respect to claim 21, for the combinations in the dependent claims as well as for the additional limitations recited in the dependent claims. Note also claim 22 reciting in part "wherein the upper position is about one-half inch". As noted above, the elements of claim 22 are

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supported in the original disclosure. A container having an upper position of about 1/2 inch would not be obvious in view of the prior art because the prior art is not concerned with permitting access to the bottom of the container for rimming drink ware without interference from the dimensions of the raised portion.

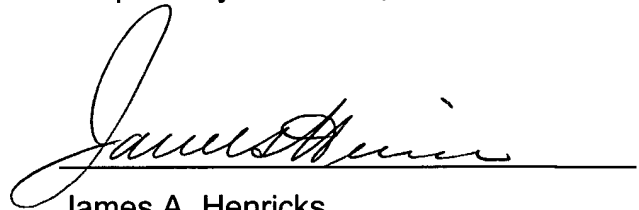
Reconsideration of the application and claims in view of the foregoing amendments and remarks is respectfully requested. Early notice of allowance thereof is earnestly solicited.

If the Examiner does not believe the foregoing amendments place the application in a condition for allowance, Applicants respectfully request the courtesy of a telephone interview to discuss the claims.

This response is being filed with a petition for a two-month extension of time, and a Fourth Information Disclosure Statement.

Please charge any additional fees that may be due or credit any overpayments to our deposit Account No. 50-0655. If a petition is required in conjunction with this paper, please consider this a request for such a petition.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "James A. Henricks", is written over a horizontal line.

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Dated: May 14, 2008

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